



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

Leonard Marshall, Treasurer  
Frederick John LaVergne for Congress  
312 Walnut Street  
Delanco, NJ 08075

**JUN - 5 2017**

RE: MUR 7104  
Frederick John LaVergne  
for Congress

Dear Mr. Marshall:

On July 13, 2016, the Federal Election Commission notified the Committee and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon review of the allegations contained in the complaint, the Commission, on May 24, 2017, found that there is reason to believe the Committee and you as treasurer, violated 52 U.S.C. § 30104(a), (b)(4) and 11 C.F.R. § 104.3(a), (b), provisions of the Act and Commission regulations. The Commission voted to dismiss the allegation that the Committee and you as treasurer violated 52 U.S.C. § 30120(a)(1) and (c)(2) and 11 C.F.R. § 110.11(b)(1) and (c)(2). Further, the Commission found no reason to believe that the Committee and you as treasurer violated 52 U.S.C. § 30120(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii). The Factual and Legal Analysis, which formed the basis for the Commission's findings, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. See 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that

pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Kimberly Hart, the attorney assigned to this matter, at (202) 694-1618 or [khart@fec.gov](mailto:khart@fec.gov).

On behalf of the Commission,

  
Steven T. Walther  
Chairman

Enclosures  
Factual and Legal Analysis

cc: Frederick John LaVergne  
312 Walnut Street  
Delanco, NJ 08075

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**MUR:** 7104

**RESPONDENTS:** Frederick John LaVergne and Leonard Marshall in his  
official capacity as treasurer

Frederick John LaVergne

**I. INTRODUCTION**

Complainant alleges that Frederick John LaVergne ("LaVergne") and Frederick John LaVergne for Congress and Leonard Marshall in his official capacity as treasurer ("Committee") failed to report disbursements for rental payments for two campaign offices. The Complaint further alleges that a website page soliciting contributions for the Committee does not contain the proper disclaimer, and the disclaimer on the homepage of the Committee's website is not contained within a printed box. Although LaVergne and the Committee were notified of the Complaint, they did not submit a response.

The Commission finds reason to believe that the Committee failed to report receipts and disbursements in violation of 52 U.S.C. § 30104(a), (b)(4) and 11 C.F.R. § 104.3(a), (b). LaVergne was the 2016 Democratic Party nominee for New Jersey's 3<sup>rd</sup> Congressional District, but the Committee reported total receipts of only \$600 for the entire 2016 election cycle, and no disbursements of any kind. Further, the Commission dismisses the allegation regarding LaVergne's contribution page, and finds no reason to believe regarding the "printed box" allegation. Because the Complaint sets forth no information which would indicate that LaVergne was personally responsible for the Committee's alleged violations, the Commission finds no reason to believe that Frederick John LaVergne violated the Act.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Facts

LaVergne was a candidate for the 3<sup>rd</sup> Congressional District of New Jersey.<sup>1</sup> The Committee was his principal campaign committee.<sup>2</sup> The Complaint alleges the campaign leased offices in Lacey Township and Willingboro, New Jersey, but failed to report any disbursements for rental payments.<sup>3</sup>

The Complaint includes copies of three Facebook posts referencing LaVergne's campaign offices.<sup>4</sup> The first is a photograph purportedly posted to LaVergne's Facebook page on March 18, 2016, which lists a campaign office address at 1044 Lacey Road – Suite 8, Lacey Township, New Jersey 08731.<sup>5</sup> The second post is from LaVergne, dated April 15, 2016, referring to the "official" opening of the Committee's "Burlington County Campaign office" in Willingboro, New Jersey, two weeks later, but also mentioning that the Committee used the office space the night before for a Presidential Debate Watch Party.<sup>6</sup> The third is an April 13<sup>th</sup> post stating that LaVergne and another candidate would host a Presidential Debate Watch Party the next night at LaVergne's campaign office located in Willingboro.<sup>7</sup> This information supports

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<sup>1</sup> Statement of Candidacy, Frederick John LaVergne (Mar. 8, 2016). LaVergne won the Democratic primary, but he lost the general election, earning 38.9% of the vote.

<sup>2</sup> Statement of Organization, Frederick John LaVergne for Congress (Mar. 8, 2016).

<sup>3</sup> Compl. at 1 (July 11, 2016).

<sup>4</sup> *Id.*, Attachs.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

1 the allegations that the Committee was using two offices in March and April 2016.<sup>8</sup> Neither the  
2 Committee nor LaVergne responded.

3 The Commission's records indicate that the Committee filed only one disclosure report,  
4 the April 2016 Quarterly Report, covering the period of March 1<sup>st</sup> through March 31, 2016.<sup>9</sup>  
5 This report disclosed receipts of \$600 and no disbursements of any type.<sup>10</sup> LaVergne was a  
6 candidate in the 2016 primary and general elections, and there is no public information that  
7 suggests the Committee did not use these offices during the months leading up to the general  
8 election.

9 **B. Analysis**

10 **1. Reporting Violations**

11 The Federal Election Campaign Act of 1971, as amended ("Act"), and Commission  
12 regulations require the treasurer of a political committee to file reports of receipts and  
13 disbursements.<sup>11</sup> The Complaint sets forth facts indicating that the Committee leased two  
14 offices, but the Committee's sole disclosure report does not list disbursements for office space,  
15 or anything else. Thus, it appears that the Committee failed to report expenditures for renting  
16 office space. In addition, the Committee has not filed any reports since the 2016 April Quarterly  
17 Report, even though LaVergne was the Democratic candidate in the general election and earned  
18 nearly 40% of the vote. It is highly unlikely that LaVergne and the Committee raised no funds

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8 *Id.*

9 *See* April 2016 Quarterly Report, Frederick John LaVergne for Congress (Apr. 14, 2016).

10 *Id.*

11 52 U.S.C. § 30104(a)(1), (b); 11 C.F.R. §§ 104.1(a), 104.3(b).

1 and made no expenditures after March 31, 2016. Therefore, the Commission finds reason to  
2 believe that the Committee violated 52 U.S.C. § 30104(a), (b)(4) and 11 C.F.R. § 104.3(a), (b).<sup>12</sup>

3 Although candidates may have liability for reporting violations by their Committees that  
4 result from their personal conduct, none of the facts before the Commission would support  
5 finding LaVergne had personal liability for the reporting violations.<sup>13</sup> Accordingly, the  
6 Commission finds no reason to believe that Frederick John LaVergne violated 52 U.S.C.  
7 § 30104(a), (b)(4) and 11 C.F.R. § 104.3(b).

8 **2. Disclaimer Violations**

9 The Act and Commission regulations require disclaimers on the following types of  
10 communications: (1) public communications made by political committees, (2) emails of more  
11 than 500 substantially similar communications sent by a political committee, (3) all websites of  
12 political committees made available to the general public, (4) public communications containing  
13 express advocacy, (5) public communications soliciting contributions, and (6) all electioneering  
14 communications by any person.<sup>14</sup> A “public communication” is defined as a “communication by  
15 means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor  
16 advertising facility, mass mailing, or telephone bank to the general public, or any other form of

<sup>12</sup> There is also the possibility that the campaign office space was provided to the Committee at no cost, which would still result in an unreported in-kind contribution from the lessor in violation of 52 U.S.C. § 30104(a), (b)(4).

<sup>13</sup> See MUR 6556 (Broun) (Commission concluded that the candidate had no personal liability for reporting violations). There are various provisions of the Act that specifically provide for candidate liability. See, e.g., 52 U.S.C. §§ 30116(f), 30118(a) and 30119. There are also other provisions of the Act that impose liability for “any person.” See, e.g., 52 U.S.C. §§ 30120 and 30122. However, the applicable provisions of sections 30104 and 30120 speak to only the liability of a political committee and its treasurer.

<sup>14</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(1) – (4).

1 general public advertising.”<sup>15</sup> However, the term “general public political advertising” does not  
2 include communications over the Internet, except for communications placed for a fee on another  
3 person’s website.<sup>16</sup> The regulations further require that disclaimers for printed communications  
4 must be conspicuous and clearly state that they are paid for or authorized by a candidate or  
5 candidate’s committee, be of sufficient type size to be readable, and be in a printed box set apart  
6 from the rest of the communication.<sup>17</sup>

7 The Complaint alleges that the Committee violated the Act’s disclaimer requirements in  
8 two ways. First, the Complaint alleges that the Committee’s “public fundraising” website does  
9 not contain a complete disclaimer.<sup>18</sup> The Complaint provides a copy of what appears to be a  
10 Paypal donation page for the Committee, which includes the notation “Frederick John LaVergne  
11 for Congress” without further explanation.<sup>19</sup> Second, the Complaint alleges that the disclaimer  
12 on the Committee’s website, www.fjl2016.com, is not contained within a printed box.<sup>20</sup>

13 The disclaimer on the bottom of home page of the Committee’s website, “Paid for by  
14 Frederick John LaVergne for Congress,” as well as the notation at the top of the Paypal page,  
15 “Frederick John LaVergne,” provide sufficient information to identify that the Committee was  
16 the party responsible for the solicitation and would be the recipient of any contributions. Even if  
17 the disclaimer on the Paypal page is incomplete, the Commission has not pursued disclaimer

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<sup>15</sup> 11 C.F.R. § 100.26.

<sup>16</sup> *Id.*

<sup>17</sup> 11 C.F.R. § 110.11(b)(1), (c)(1) – (2).

<sup>18</sup> Compl. at 1.

<sup>19</sup> *Id.*, Attach. Although the Complaint provides a link to the Paypal page, the link is not accessible. The Complaint attachment is not identical to the Committee’s current donation page, but could represent an earlier version that was later modified to allow contributions to be made by credit card as well as through Paypal.

<sup>20</sup> . Compl. at 1.

1 violations where the disclaimer was incomplete but contained sufficient information to identify  
2 the party responsible for the communication.<sup>21</sup> Under these circumstances, the Commission  
3 exercises its prosecutorial discretion and dismisses the allegation that the Committee violated  
4 52 U.S.C. § 30120(a), (b) and 11 C.F.R. § 110.11(b)(1), (c)(1) – (2).<sup>22</sup>

5 As to the allegation that the disclaimer on the Committee's website was not contained  
6 within a printed box, the Commission has concluded that internet pages do not constitute  
7 "printed communications."<sup>23</sup> Therefore, the "printed box" requirement does not apply to  
8 campaign websites.<sup>24</sup> Accordingly, the Commission finds no reason to believe that the  
9 Committee or LaVergne violated 52 U.S.C. § 30120(c)(2)(ii).

<sup>21</sup> See MUR 6785 (Kwasman for Congress) (dismissing allegation because campaign materials at issue contained partial disclaimer identifying the payor); MUR 6278 (Committee to Elect Joyce B. Segers for Congress) (dismissing allegations that campaign websites and flyers lacked requisite disclaimers where partial payor information in the form of contact information was included).

<sup>22</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>23</sup> 11 C.F.R. § 110.11(c)(2)(ii); see MUR 6904 (Cat Ping for Congress); see also Statement of Reasons, Comm'rs. Weintraub, Walther, Lenhard, Mason, Toner and von Spakovsky at 4, MUR 5526 (Graf for Congress); MUR 6591 (Friends of Tom Stilson).

<sup>24</sup> *Id.*

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